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ment, obtains a legal title under such circumstances as that, according to the rules of equity and good conscience, it would be a fraud upon the employer to permit the title thus obtained to stand. *Gower v. Andrew*, *supra*; *Davis v. Hamlin*, 108 Ill. 39, 48 Am. Rep. 541; 1 PERRY, TRUSTS, 100.

TORTS—DRUGGISTS' LIABILITY FOR INJURIES FROM PROPRIETARY MEDICINES.—Plaintiff purchased from defendants a box of tablets bearing their label in such a manner as to represent them as the manufacturers. The tablets in fact had been put up by reputable wholesale druggists who placed the defendants' label thereon. The defendants had not analyzed the tablets, but assured plaintiff that they were perfectly harmless. In an action by plaintiff for injuries resulting from use of the tablets according to the directions given. *Held*, negligence can be predicated of defendants' action and they are liable for damages. *Wilson v. Faxon, Williams & Faxon*, 208 N. Y. 108, 101 N. E. 799.

A druggist impliedly warrants the good quality of drugs sold. The rule *caveat emptor* does not apply. *Jones v. George*, 56 Tex. 149, 42 Am. Rep. 689. He is required to exercise the highest degree of care known to practical men to prevent injury from the drugs sold by him. *Peters v. Johnson*, 50 W. Va. 644, 41 S. E. 190, 57 L. R. A. 428. To sustain an action *ex delicto* against him only proof of negligence is necessary, whereas to sustain an action *ex contractu* privity of contract must be proved. *Davidson v. Nichols*, 93 Mass. (11 Allen) 514; *Howes v. Rose*, 13 Ind. App. 674, 42 N. E. 303. Where a manufacturer puts up drugs to be sold by a dealer, he is liable to any person who may eventually purchase such drugs for use and uses them according to his directions, since "fraud is not purged by circuitry." *Thomas v. Winchester*, 6 N. Y. 397.

A retail druggist, however, is not required to analyze the contents of each package of a proprietary medicine which he gets from the manufacturer. If he delivers to the customer the article called for with the label of the proprietary on it, he cannot be charged with negligence. *West v. Emmanuel*, 198 Pa. St. 180, 47 Atl. 965, 53 L. R. A. 329. But the principal case extends this doctrine by holding him liable if he places his own name on the article so as to represent himself as the manufacturer, even though he be not such in fact.

WARRANTY—ACCEPTANCE OF GOODS—WAIVER OF BREACH.—Defendant purchased goods relying on sample. Defective goods were delivered and defendant accepted and retained them without knowledge of their defective condition. Plaintiff sued for purchased price of the goods. *Held*, defendant does not waive the breach of warranty by retaining the property but can recoup his damages suffered by the breach of the warranty even though he did not offer to return and there was an opportunity for inspection. *Jacot v. Grossman* (Va.), 78 S. E. 646. See NOTES, p. 151.